

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

**JUANA CRUZ, OFELIA BENAVIDES,  
JOSE ELIAS N.G, GABRIELA  
VELAZQUEZ, RICARDO GONZALEZ,  
MELESIO CRUZ, ANGELICA CHAVEZ,  
CONCEPCION PEREZ, OLGA PEREZ,  
MAURICO SAENZ, JORGE MAULEON,  
HECTOR SANCHEZ, HECTOR  
GONZALEZ, YESSY PEREZ  
MARTINEZ, MARIA DE LOURDES  
CRUZ, RESENDO LIEVANOS,  
ELIZABETH LARA, LUIS ALBERTO  
ZUNIGA CASTILLO, MIGUEL  
CABALLERO SANCHEZ, GUILLERMO  
DE LA CRUZ MENDOZA, CARLOS  
DANIEL LOPEZ, GILDA RIVAS,  
ARMANDO MORALES DE LLANO,  
LAZARO GARCIA, MARIA DE JESUS  
MEDINA, RICHARD ESQUIVEL,  
PATRICIA CONDE-GONZALEZ,  
NORMA CONDE ALANIZ, RAFAEL  
SANCHEZ, GUILLERMO RUIZ, ROSA  
QUINTANILLA,**

**Plaintiffs,**

**v.**

**DELGAR FOODS, LLC D/B/A/ DELIA'S**

**Defendant.**

**CASE NO.: 7:23-CV-00343**

**JURY DEMANDED**

**JOINT STATUS REPORT REGARDING NUMBER OF DEPOSITIONS NEEDED**

Plaintiffs Juana Cruz, *et al.* (“Plaintiffs”) and Defendant Delgar Foods d/b/a Delia’s (“Delia’s” or “Defendant”) (collectively, the “Parties”) hereby submit this Joint Status Report pursuant to the Court’s December 15, 2023, Scheduling Order [ECF 18] requesting that the parties advise the Court of the number of depositions needed.

Regarding the Number of Depositions Plaintiff Intends to Take, Plaintiffs State:

We anticipate taking depositions of 11 Defendants. Defendants will be asked about operating procedures, paying employees their weekly pay with cash and their overtime pay with cash. The envelope would only have the individual's name on it and no breakdown as to weekly hours worked, and overtime hours worked and how much they were paid for their overtime. Defendants will be asked about two sets of books. Defendants will be asked about the scheme of supplying the employee with fake social security numbers and fake permanent resident numbers. Defendants have objected to our discovery request including interrogatories, admissions, and production of documents. Defendants will be asked why they failed to post the employee rights under the fair labor standards act to its employees beginning July 24<sup>th</sup>, 2009. Defendants will also be asked why they waited until 2022 to post the employee rights under the fair labor standards act. Defendants will be asked why some employees.

Regarding the Number of Depositions Defendant Intends to Take, Defendant States:

As explained below, Delia's anticipates taking the deposition of each plaintiff (31).

Delia's need to depose each plaintiff because Plaintiffs' allegations remain vague, at best, and they are individualized for multiple reasons. While Plaintiffs allege to be owed overtime, they have not articulated allegations that form a claim as to *why* they are entitled to such overtime or the nature of the alleged violation. Delia's is entitled to understand how Plaintiffs claim it violated the FLSA. Moreover, some plaintiffs are managers and Delia's claims that they are exempt from overtime, two plaintiffs stopped working for Delia's about 10 years ago, and Delia's has no record of 7 plaintiffs. Therefore, the plaintiffs are unique in their allegations, claims, and the defenses that may apply to their claims.

Delia's also needs individual depositions because plaintiffs have not complied with the Initial Discovery Protocols for FLSA Cases Not Plead as Collective Actions ("Initial Discovery Protocols") entered in this case. ECF No. 17. Delia's served its responses to the Initial Discovery Protocols on February 9, 2024, pursuant to this Court's Order for Disclosure.<sup>1</sup> Counsel for Defendant, Laura Alaniz and Stephen Quezada, conferred with counsel for Plaintiffs, Douglas A'Hern, by phone regarding the need for plaintiffs to articulate their theory of the alleged violation and additional time needed by plaintiffs to comply with the Court's Order for Disclosure. Delia's agreed, to the extent possible, to an extension of until February 12, 2024, for Plaintiffs to serve the Initial Discovery Protocols.

On February 13, 2024, Plaintiffs served deficient responses to the Initial Discovery Protocols and produced 117 pages of documents, consisting of affidavits, personal tax returns, and tax informational documents. That same day, counsel for Defendant, Lorena Valle, conferred with Plaintiffs' counsel, Douglas A'Hern, by phone regarding the deficiencies in Plaintiffs' responses and followed up with an email memorializing the conversation. Plaintiffs stated that additional time was needed to serve their complete and responsive Initial Discovery Protocols and requested until February 23, 2024 to do so. Delia's agreed to the extension. However, on February 20, Plaintiffs' counsel advised Defendant's Counsel that they would be unable to comply with the Court Order by February 29, 2024. Delia's declined to provide another extension, to the extent it may even do so as the deadline is Court-ordered, because of the need to prepare this Joint Status Report and evaluate the number of depositions needed. To date, Plaintiffs have not served complete, responsive Initial Discovery Protocols or produced additional responsive documents.

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<sup>1</sup> Delia's also served 8,403 pages of responsive documents, consisting of time and pay records maintained by Delia's for the Plaintiffs; the job descriptions of the positions the Plaintiffs held during the relevant time period; Delia's policies, procedures, or guidelines for compensation that are relevant to the FLSA claims; and the relevant pages of Delia's policies and procedures manual pertaining to compensation or time worked)

Dated: February 29, 2024

Respectfully submitted,

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d/b/a DELIA'S

Respectfully submitted,

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